

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.686/Mds/2017

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 2(1),  
Chennai - 600 034.

v. M/s Fleet Management Pvt. Ltd.,  
No.108, First floor, Catholic Centre,  
64, Armenian Street,  
Chennai - 600 001.

(अपीलार्थी/Appellant)

PAN : AAACF 5475 B

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Madhavan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R.K.V. Sundar, Advocate

सुनवाई की तारीख/Date of Hearing : 17.08.2017

घोषणा की तारीख/Date of Pronouncement : 23.08.2017

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-9, Chennai, dated 21.12.2016 and pertains to assessment year 2008-09.

2. Shri N. Madhavan, the Ld. Departmental Representative, submitted that the Assessing Officer found that the assessee-company is a beneficial shareholder in M/s Transcoastal Cargo &

Shipping Ltd. In fact, according to the Ld. D.R., the assessee has received ₹5,21,16,692/- as unsecured loan from M/s Transcoastal Cargo & Shipping Ltd. Even though the assessee-company is not a shareholder in M/s Transcoastal Cargo & Shipping Ltd., there were common shareholders in both the companies. Therefore, according to the Ld. D.R., the assessee-company has to be treated as beneficial shareholder, hence, the CIT(Appeals) is not justified in reversing the order of the Assessing Officer.

3. On the contrary, Shri R.K.V. Sundar, the Ld.counsel for the assessee, submitted that the assessee-company was incorporated on 16.03.2001, whereas, M/s Transcoastal Cargo & Shipping Ltd. was incorporated on 28.09.2000. When M/s Transcoastal Cargo & Shipping Ltd. was incorporated, the assessee-company itself was not in existence. The assessee came into existence only from 16.03.2001. Moreover, according to the Ld. counsel, the assessee-company is not holding any shares of M/s Transcoastal Cargo & Shipping Ltd. Only Shri J. Manavalan has invested in the shares of both the assessee-company and M/s Transcoastal Cargo & Shipping Ltd. According to the Ld. counsel, mainly because there was a common shareholder, it cannot be said that the assessee is

holding any beneficial shares in M/s Transcoastal Cargo & Shipping Ltd., therefore, the CIT(Appeals) has rightly allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. We have also carefully gone through the provisions of Section 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act'). As per this Section, deemed dividend can be assessed either in the hands of registered shareholder or in the hands of beneficial shareholder. The Assessing Officer observed that the assessee-company is a beneficial shareholder. For the purpose of considering a company as a beneficial shareholder, the company has to invest its funds in the shares of other company either in its own name or in the name of some other person. In this case, the assessee-company itself came into existence after incorporation of M/s Transcoastal Cargo & Shipping Ltd. On the date of incorporation of M/s Transcoastal Cargo & Shipping Ltd., the assessee-company was not in existence. Even now, the assessee-company is not a shareholder in M/s Transcoastal Cargo & Shipping Ltd. Therefore, it is obvious that the assessee-company has not made any investment in the shares of

M/s Transcoastal Cargo & Shipping Ltd. In those circumstances, this Tribunal is of the considered opinion that the assessee-company cannot be considered to be beneficial shareholder. Therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 23<sup>rd</sup> August, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> August, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-9, Chennai-34
4. Principal CIT- 2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.